mention notice, but it is perhaps necessary. *Southern Flour Co.* v. *St. Louis Grain Co.* (Ga. 1912), 75 S. E. 439. The Sales Act stipulates that notice shall be unnecessary.

SALES—MONOPOLIES—LIABILITY OF BUYER FOR PURCHASE PRICE.—Plaintiff, who for purposes of the decision may be considered a combination in unlawful restraint of trade, sold glucose to the defendants for its own consumption only and not for resale, and agreed in return for the exclusive trade of the defendant for any one year to give a rebate on the exclusive trade of the year next preceding. In an action for the price the defendant set up the above facts and claimed that the contract of sale with its provisions against resale and for a rebate formed part of a conspiracy in restraint of trade, void under the Sherman Anti-Trust law. *Held,* that the contract was merely collateral to the restraint of trade, and that the defendant was liable for the contract price. *Wilder Mfg. Co.* v. *Corn Products etc. Co.* (Ga. 1912), 75 S. E. 918.

It is no defense to an action for the price that the seller is a combination in restraint of trade, under either the common law or the Sherman Anti-Trust law. *Connelly* v. *Sewer Pipe Co.,* 184 U. S. 540; *Charles E. Wiswall Co.* v. *Scott,* 86 Fed. 671; *Bessire & Co.* v. *Corn Producers Mfg. Co.* (Ind. 1911), 94 N. E. 353. But if the contract of sale is such that the buyer becomes a part of the combination or conspiracy in restraint of trade, he is not liable for the price. *Continental Wall Paper Co.* v. *Voight,* 212 U. S. 227.

SUNDAY STATUTES—WORK OF NECESSITY.—Defendants were prosecuted for violation of a Sunday statute, which forbade work or labor on Sunday, and which excepted from its operation works of necessity or charity. The petition alleged that the defendants kept their place of business open on Sunday, and sold bread, butter, sandwiches, coffee and chocolate therein on that day. *Held* that a general demurrer to the petition was properly sustained; that as a matter of law, the sale of the articles enumerated was a work of necessity. *Commonwealth* v. *London* (Ky. 1912), 149 S. W. 852.

"The question of what is and what is not a labor of necessity within the Sunday statutes has been often mooted and much discussed in the authorities." *State* v. *Schatt,* 128 Mo. App. 622. That there should be some difference of opinion is nearly inevitable from the very nature of these statutes. As was said in *State* v. *James,* 81 S. C. 197, "Necessity is an elastic term. It does not mean that which is indispensable, but it means something more than that which is merely needful or desirable." The basis of the Court's decision in the principal case was that the defendants, in disposing of the articles named, were doing the business of a restaurant keeper. It has been generally held that innkeepers and restaurant keepers are performing works of necessity in the conduct of their business, and hence are not within the prohibition of the statutes. *Com.* v. *Naylor,* 34 Pa. St. 86; *Com.* v. *Hengler,* 15 Pa. Co. Ct. 222. The preparation of food in the household by a servant is a work of necessity. *Crosman* v. *City of Lynn,* 121 Mass. 301. But in *Com.* v. *Crowley,* 145 Mass. 430, it was held that the sale of bread, pastry, and milk from a shop on Sunday was unlawful, and that an excep-

tion in the statute allowing sales by bakers on Sunday did not apply to those merely dealing in the products of bakeries. The delivery of milk on Sunday has been held to be a work of necessity, *City of Topeka* v. *Hempstead,* 58 Kan. 328; but in *Com.* v. *Martin,* 7 Pa. Co. Ct. 154, it was held that the sale of milk was a "worldly employment" and prohibited by the Sunday Act. The sale and delivery of ice or fresh meat on Sunday is not a work of necessity. *State* v. *James, supra.* The sale of soda-water and fruit is not a work of necessity. *Com.* v. *Hengler, supra; Gulfport* v. *Stratakos,* 90 Miss. 489. It has been held that publishing and circulating Sunday papers is not a work of necessity. *Com.* v. *Matthews,* 152 Pa. St. 166; *Com.* v. *Dale,* 144 Mass. 363. The sale of cigars is not a work of necessity, *State* v. *Ohmer,* 34 Mo. App. 115; and this is true although the sale be made to a habitual smoker, *Mueller* v. *State,* 76 Ind. 310. The principal case seems indicative of a present tendency of the Courts toward increasingly liberal constructions of the term "necessity" as applied to Sunday statutes.

TORTS—LIABILITY OF MASTER FOR TORT BY INSANE SERVANT.—Conductor on defendant's railway train assaulted, cursed, and abused plaintiff. Defense was that the conductor was insane. *Held,* insanity of conductor was no defense. *Chesapeake & O. Ry. Co.* v. *Francisco* (Ky. 1912), 148 S. W. 46.

By the great weight of athority, an insane person, to the extent of compensation, is just as responsible for his torts as a sane person, except, perhaps, for those torts in which malice is a necessary ingredient. *Feld* v. *Borodofski,* 87 Miss. 727, 40 So. 816; *Ullrich* v. *N. Y. Press Co.,* 50 N. Y. Supp. 788, 23 Misc. Rep. 168; *McIntyre* v. *Sholty,* 24 Ill. App. 605; *Cross* v. *Kent,* 32 Md. 581; *Jewell* v. *Colby,* 66 N. H. 399, 24 Atl. 902; *Kirby* v. *Schoonmaker,* 3 Barb. 46; *Young* v. *Young* (Ky. 1910), 132 S. W. 155; *Bollinger* v. *Rader* (N. C. 1910), 69 S. E. 497; *Moore* v. *Horne* (N. C. 1910), 69 S. E. 409. Compare *Williams* v. *Hays,* 157 N. Y. 541, 52 N. E. 589. In the principal case the court reasons that since the insane person is liable for his torts, an employer cannot plead a servant's insanity as a defense to an action against him for the torts of such servant. It is also true that a carrier is liable for personal injuries to passengers resulting from its failure to employ competent servants. *Caveny* v. *Neely,* 43 S. C. 70, 20 S. E. 806; *Grand Rapids & I. R. Co.* v. *Ellison,* 177 Ind. 234, 20 N. E. 135; *McAllister* v. *People's Ry. Co.* (Del.) 4 Penn. 272; 54 Atl. 743; *Blumenthal* v. *Union Electric Co.,* 129 Ia. 322, 105 N. W. 588; *Hansberger* v. *Sedalia Electric Ry., L. & P. Co.,* 82 Mo. App. 566.

WILLS — CONSTRUCTION — SPENDTHRIFT TRUSTS. — Under a devise to two grandchildren, subject to a trust to take, hold, and manage the estate so devised until certain contingencies, enough only of the profits thereof were to be used in the meantime for education and support. The contingencies were that if either died before children born, his share of the estate should go to the other, and if they both died without children born, their share of the estate should be distributed to the other beneficiaries. *Held,* that since this was a spendthrift trust, it continued until the death of the survivor. *McCoy* v. *Houck* (Ind. 1912), 99 N. E. 97.